

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4  
5 PACIFIC OFFICE AUTOMATION INC., )  
6 an Oregon corporation, )

7 Plaintiff, )

8 v. )

9 PITNEY BOWES INC., a Delaware )  
10 corporation; PITNEY BOWES GLOBAL )  
11 FINANCIAL SERVICES LLC, a )  
12 Delaware limited liability )  
13 company; THE PITNEY BOWES BANK, )  
14 INC., a federal banking )  
15 institution; and WHEELER )  
16 FINANCIAL FROM PITNEY BOWES INC., )  
17 a Delaware corporation, )

18 Defendants. )

Case No.  
3:20-cv-00651-AC

July 21, 2021

Portland, Oregon

19  
20 **TRANSCRIPT OF PROCEEDINGS**

21 (Scheduling conference by teleconference)

22  
23 BEFORE THE HONORABLE JOHN V. ACOSTA

24 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

25 **COURT REPORTER:**

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(July 21, 2021, 10:04 a.m.)

**P R O C E E D I N G S**

THE COURT: Good morning. This is Judge Acosta. I'm going to take role. Miss Manolio, are you there?

MS. MANOLIO: Good morning, Your Honor. Veronica Manolio is here.

THE COURT: Thank you. Anyone else for the plaintiff?

MR. McCUNE: Good morning, Your Honor. Jamison McCune, local counsel for Pacific Office Automation.

THE COURT: Thank you.

And for defendants. Mr. Van Der Weele.

MR. VAN DER WEELE: Good morning, Your Honor. Yes, Phil Van Der Weele here for the defendants.

THE COURT: Anyone else?

MS. WHITE: Yes. Good morning, Your Honor. Elizabeth White also for defendants.

THE COURT: All right. Miss Manolio, will it be you for the plaintiff?

MS. MANOLIO: Yes.

THE COURT: And Mr. Van Der Weele, will it be you for the defendant?

MR. VAN DER WEELE: Yes, Your Honor.

THE COURT: All right. You want to talk about deadlines first? Mr. Van Der Weele, I got your e-mail from

1 yesterday and, among other topics, deadlines for fact discovery  
2 and the need for additional fact discovery. Go ahead.

3 MR. VAN DER WEELE: That's actually -- those are  
4 intended to be a joint e-mail, Your Honor. It's actually  
5 Ms. Manolio's issue, so I'll let her speak to it first.

6 THE COURT: Okay. Miss Manolio, go ahead.

7 MS. MANOLIO: Thank you, Your Honor. I don't know if  
8 you remember the last time that we were all here we had a  
9 significant discussion about discovery and we did extend the  
10 deadlines, and the discussion was that we would meet again and  
11 talk about where discovery was and where it's going.

12 Since that time, I believe that Mr. Van Der Weele and I  
13 have done a tremendous job of getting discovery underway;  
14 however, there are a significant number of deponents in this case  
15 and it's a highly voluminous case in terms of documents, and  
16 we -- my perspective is that recent discovery has just led us to  
17 know that we do need some additional discovery.

18 I had proposed to Mr. Van Der Weele that we extend the  
19 discovery deadlines, and there's just a disagreement.

20 But from my perspective, Your Honor, here's where we  
21 stand. We have taken a fair number, I believe there have been  
22 seven or eight depositions now of key witnesses. There are still  
23 some key witnesses on the schedule that are agreed upon even  
24 though they are beyond the original date set for our deadline,  
25 and I don't think there's any dispute about that. But from POA's

1 perspective, plaintiff's perspective, the recent depositions have  
2 required the need for additional or follow-up written discovery,  
3 and that's the agreement that we cannot make.

4 I think that additional discovery needs to be  
5 undertaken for the reason that witnesses have shown that we need  
6 to have some more documentation. And there was a counterclaim  
7 filed just last week, it was just approved by the Court, and  
8 there's been zero discovery taken on the counterclaim because it  
9 wasn't filed until recently, it wasn't permitted to be filed  
10 until recently.

11 So for those reasons, I think that we should extend  
12 discovery deadlines at least until September and maybe have an  
13 additional conversation in September as to how much we've been  
14 able to do in the next 60 days, because I do think both parties  
15 are at least working in good faith to get it done. I just think  
16 that there's some need for additional written discovery.

17 THE COURT: All right. So two things before I hear  
18 from Mr. Van Der Weele.

19 MS. MANOLIO: Sure.

20 THE COURT: When you say, Miss Manolio, "additional  
21 discovery," I understand that to mean discovery on issues that  
22 existed before the counterclaim was filed.

23 MS. MANOLIO: On their -- yes, Your Honor. I think  
24 there needs to be both. There certainly needs to be discovery on  
25 the counterclaim, because nothing has been done, but when I use

1 the word "additional," you are correct, I am absolutely talking  
2 about just issues that have arisen during the discovery phase on  
3 the first part that necessitate more requests.

4 I agree with Mr. Van Der Weele's sentiment. We could  
5 have sent requests at the beginning, but there are certain issues  
6 that arose in depositions we just didn't know that would arise  
7 that necessitate additional written discovery, but you got it,  
8 Judge.

9 THE COURT: And then the second piece is the new  
10 counterclaim would require discovery from the plaintiff's  
11 standpoint as well. So those two things together.

12 MS. MANOLIO: Correct. And I do believe that the  
13 discovery on the counterclaim should be minimal, because I think  
14 the counterclaim is minimal. So when I ask the Court to, you  
15 know, set a September deadline, even if you're inclined to say  
16 that there needs to be discovery on the counterclaim, I am not  
17 offended by a short ticker, because we knew the issues were  
18 coming, we just didn't do discovery because it wasn't ripe yet.

19 THE COURT: All right. Thank you.

20 Mr. Van Der Weele, go ahead, please.

21 MS. MANOLIO: Sure.

22 MR. VAN DER WEELE: Thank you, Your Honor. Phil  
23 Van Der Weele on behalf of the defendants. Four points, Your  
24 Honor. And, again, I'm going to -- first of all, I'm going to  
25 limit these remarks solely to the issue of extending the deadline

1 for the purpose of serving additional written discovery, as there  
2 are other discovery issues out there. As Ms. Manolio had  
3 mentioned, we're still doing depositions, but we've agreed, you  
4 know, to go beyond that, and there's no dispute there. We've  
5 been cooperating, and that's fine. And I anticipate bringing  
6 several additional discovery motions, but they're based on  
7 discovery requests that I made long ago, so I don't need any  
8 extension of the deadline to do that.

9 So, again, I'm focusing only on the plaintiff's request  
10 for extension to serve additional discovery. That deadline for  
11 service, by the way, Your Honor, was 2 months ago, May 21st,  
12 given the cutoff date for fact discovery of June 22.

13 THE COURT: All right. Thank you. Go ahead.

14 MR. VAN DER WEELE: And the first point, Your Honor, is  
15 that there's not good cause for extension, because POA has  
16 already had plenty of time to serve additional written discovery.  
17 POA had, you know, 8 months after the 26(f) conference last  
18 September. POA did, in fact, serve additional discovery requests  
19 in March, and then just a few days after they served those  
20 requests, they got a 60-day extension of the discovery deadline.  
21 That happened in late March at the hearing on these motions to  
22 compel. And so at the end of March, they had another 60 days to  
23 serve written discovery requests, and they didn't do it.

24 The second point is that the so-called new  
25 counterclaim, it was filed just recently, but, of course, the

1 motion for leave to file it was filed back in January. But  
2 anyway, that counterclaim does not justify new fact discovery,  
3 because there's no factual surprises in the counterclaim. The  
4 facts underlying the counterclaim have been in the case since the  
5 time Pitney answered the complaint more than a year ago.

6 And just as a reminder, Your Honor, Pitney's  
7 counterclaim is that Pacific Office breached the dealer agreement  
8 by selling or leasing the products of a competing manufacturer a  
9 company called Francotyp-Postalia, that's F-R-A-N-C-O-T-Y-P dash,  
10 Francotyp-Postalia, called FP for short, that Pacific Office  
11 breached by selling those FP products to existing Pitney Bowse  
12 customers.

13 The dealer agreement prohibited Pacific Office from  
14 placing FP equipment with existing Pitney Bowes customers, so  
15 each time Pacific Office flipped a customer from Pitney equipment  
16 to FP equipment, it breached the agreement, and that's our  
17 counterclaim.

18 And the allegations that Pacific Office breached the  
19 dealer agreement by flipping Pitney customers to FP equipment is  
20 not a new one. It's been in the case from -- ever since Pitney  
21 filed its original answer more than a year ago in June of 2020.  
22 Our ninth affirmative defense was, and I quote: Plaintiff's  
23 claims are barred in whole or in part by plaintiff's material  
24 breach of the contract, specifically including Section 6.03(2) of  
25 the PB-POA dealer agreement attached as Exhibit 1 to the



1 complaint.

2 And Section 6.03(2) of the dealer agreement, Your  
3 Honor, is the -- is the provision that says that Pacific Office  
4 cannot place FP equipment with existing Pitney customers.

5 So there are no factual surprises in the counterclaim,  
6 and I don't think it justifies any further written discovery.

7 The next two points, Your Honor, are conditional, or  
8 fallback positions. I don't think there should be any extension  
9 of written discovery, but the third point is that if the Court  
10 does allow additional discovery, it should be limited to the  
11 counterclaim.

12 Again, Pacific Office had 8 months after the 26(f)  
13 conference to serve written discovery. Here we are a month --  
14 we're 2 months beyond the deadline for serving written discovery,  
15 we're a month after the June 22 fact discovery date, and we're  
16 talking about extending the deadline again. I just -- at some  
17 point, you know, enough is enough.

18 And then, finally, Your Honor, my -- my fourth point is  
19 that if the Court does allow Pacific Office -- Pacific Office  
20 additional discovery on the counterclaim, that discovery should  
21 be conditional on POA's -- I keep saying POA. That's short for  
22 Pacific Office Automation. I apologize. It should be  
23 conditional on Pacific Office's first providing discovery that  
24 the defendants have been requesting on the counterclaim since  
25 last October, because as things stand right now, I'm going to

1 have to make two discovery motions to get information on the  
2 counterclaim that I last -- that I asked for last October, and I  
3 think it's just fundamentally unfair for POA to get discovery  
4 before Pitney does when Pitney made timely requests more than  
5 9 months ago.

6 And just a brief preview on those motions, just a  
7 thumbnail. One issue is research terms. POA has refused to run  
8 electronic searches using the terms "Francotyp-Postalia" and  
9 "FP," claiming that they're irrelevant, but those search terms  
10 are relevant for the affirmative defense in the counterclaim.

11 And the second issue is the identification of customers  
12 who had been Pitney -- who had been Pitney customers, and then  
13 POA came in and flipped those customers over to FP equipment  
14 during the term of the dealer agreement.

15 And each one of those flips is a breach, and we asked  
16 about those flips in Interrogatory 14 served last October. They  
17 didn't answer the interrogatory, so we moved to compel. They  
18 came -- Your Honor ordered them to do it. They came back and  
19 said we absolutely have no way of doing it. So then I tried  
20 to -- I made a proposal to try to solve the problem. I proposed  
21 that a techie at Pitney Bowes do it with all sorts of  
22 protections. We need a modification of the protective order to  
23 let the techie have an Excell file, but POA won't agree to that.  
24 So I anticipate having to file a motion to modify the protective  
25 order in order to get what I asked for 9 months ago.

1           If the Court is going to allow additional written  
2     discovery on the counterclaim, I would request that Pitney not  
3     have to respond until the Court has decided Pitney's discovery  
4     motions and Pacific Office has complied with whatever the Court  
5     has ordered.

6           THE COURT: All right. Before I hear from Miss Manolio  
7     on the first three points, I'm going to start with the fourth  
8     point.

9           Miss Manolio, with -- I'm not going to rule on any  
10    discovery issues, because, first, I'm not fully informed; second,  
11    that's not the purpose of this conference and you haven't had a  
12    chance to prepare to respond to any issues that are currently --  
13    currently in play.

14          What I will address are what I infer from  
15    Mr. Van Der Weele's comments about the outstanding discovery  
16    disputes, that it's not been either timely made or there has been  
17    some inability or unwillingness to engage in, for example, the  
18    electronic discovery. That's been discussed.

19          All I want to know is whether these issues  
20    Mr. Van Der Weele has suggested would be the subject of  
21    forthcoming motions can be resolved in whole or in part before  
22    that's necessary.

23          MS. MANOLIO: If you want a simple answer, the answer  
24    is maybe, because they're not framed right. And  
25    Mr. Van Der Weele -- are you asking me to -- can I respond in

1 total or are you just asking for a "yes" or "no" answer?

2 THE COURT: Pretty much just a "yes" or "no" answer  
3 right now.

4 MS. MANOLIO: The answer's maybe.

5 THE COURT: Maybe. Okay.

6 MS. MANOLIO: There are some issues that I believe we  
7 have significantly made headway on and certain things that --  
8 certain searches we are doing, and I've been keeping  
9 Mr. Van Der Weele abreast at every juncture.

10 THE COURT: Okay. All right.

11 MS. MANOLIO: But the issue -- one issue will need  
12 further intervention.

13 THE COURT: All right. All right. That's fine.

14 I'm -- as I said, I'm not making a ruling on the  
15 discovery issues at this time that Mr. Van Der Weele mentioned in  
16 his fourth point, not on the merits.

17 I will -- I will offer an observation that I have  
18 offered in cases over the years where there have been more than  
19 one discovery dispute and usually involving organizations or  
20 corporate entities. And I will say before I make this  
21 observation, I don't know that that's -- that what I'm about to  
22 say is present in this situation, but I will say this: one of  
23 the things I can do as a judge is I can get the parties'  
24 attention, and over the years I have ordered party  
25 representatives, no matter where they are in the country, to be

1 in my courtroom to talk about issues that seem unable to be  
2 resolved for reasons that are not explainable.

3 So that's perhaps an indirect way of saying if either  
4 or both parties in this case need help with their respective  
5 clients, I can do that. So I'll just leave that there. I don't  
6 expect you to respond to that.

7 On the other three points that Mr. Van Der Weele has  
8 made, I'm going to do this: I'm going to extend the fact  
9 discovery deadline for all fact discovery, including the  
10 counterclaim, to September 22nd, 2021, with a status conference  
11 on September 14, 2021, to see where we are before that deadline  
12 expires. The status conference will be by phone.

13 Next, I want to resolve the discovery issues that  
14 Mr. Van Der Weele mentioned and that you briefly addressed,  
15 Miss Manolio, as soon as possible before additional discovery on  
16 the existing issues, that new discovery on the counterclaim is  
17 produced. It doesn't mean you can't serve the requests or  
18 schedule depositions, but it does mean that before  
19 Mr. Van Der Weele and his client, Pitney Bowes, has to turn over  
20 information, you're going to sort out the existing discovery  
21 disputes, which -- at least one of which you've acknowledged will  
22 need intervention, it seems.

23 Before we move on to the other item on  
24 Mr. Van Der Weele's e-mail and anything else the parties want to  
25 talk about, Miss Manolio, is there anything you want to say

1 before we do that?

2 MS. MANOLIO: I do want to, Your Honor. I'd like to  
3 respond in total regarding Mr. Van Der Weele's sort of  
4 conditional requests and now the Court's decision that -- which I  
5 believe does affect me, that there is an ability for me to  
6 provide written discovery, but that Pitney Bowes is not required  
7 to respond until the other issues are resolved.

8 At this juncture, the Court has zero indication that  
9 there are issues that need to be resolved other than the fact  
10 that I briefly said one might need intervention, and that's not a  
11 pending discovery request.

12 So, Your Honor, I feel that I need to make a record  
13 now, because Mr. Van Der Weele -- let me start with this. When  
14 we talked back in March, we first got on the phone, the Court did  
15 a very good job of telling me, "My preference is you never say  
16 bad faith about a lawyer unless you're prepared to prove it up,  
17 and you" -- you, as in POA -- "did something wrong in this case."

18 I took every word you said to heart, Your Honor. I  
19 think that me jumping onboard and being the primary contact on  
20 this case has dramatically changed the scope of the case and the  
21 procedure. Mr. Van Der Weele and I have many disagreements, but  
22 we get along.

23 The issues that Mr. Van Der Weele brought to your  
24 attention this morning, I disagree with, and they were improper  
25 to even bring to the Court, because there's no motion. For

1 Mr. Van Der Weele to tell you something has been done without  
2 proving it up is exactly what you asked in the last hearing for  
3 me not to do: Don't claim there's bad faith on another party  
4 unless you're prepared to show it.

5 Mr. Van Der Weele will not be able to tell you or show  
6 you that we have not acted in complete good faith, and that  
7 everything he's asked me to do as follow-ups once I've already  
8 responded to discovery, once the Court ordered me to supplement  
9 and I already have supplemented, we had professional  
10 meet-and-confers and he asked for additional items, and we've  
11 done everything he's asked.

12 So I'm very troubled by the fact that he would bring to  
13 you a motion that's not before you and then tell you that we're  
14 doing something wrong, because that is not the case.

15 I'm more troubled that the Court would order discovery  
16 conditional on a request that was not proper and that was not  
17 based in reality, but rather in POA's -- or excuse me -- Pitney  
18 Bowes' opinion.

19 The one issue I said would need court intervention is  
20 not something I have failed to respond to. As Mr. Van Der Weele  
21 said, he wants a process, a new process where he can take my  
22 client's customer list and give it to someone at Pitney Bowes and  
23 let Pitney Bowes run a search against it. That's not an existing  
24 request, and that's the issue that I said might need court  
25 intervention, because we disagree and say it would violate the

1 protective order. He knows it would, which is why he said, "I  
2 may have to go to the Court and ask the Court to modify the  
3 protective order."

4 But, Your Honor, that's not an issue of POA not  
5 providing discovery. We gave the customer list that you ordered  
6 me to give. He just wants to turn it over to someone inside of  
7 Pitney Bowes even though there's an "Attorneys Eyes Only" order  
8 on it that falls under the current protective order.

9 All that being said, the reason I say that is it's  
10 fundamentally unfair for the Court to say, "I'm going to order  
11 new discovery is conditional," when the issues that were brought  
12 to you were not brought properly and they're not brought based on  
13 good faith discussions and efforts that have been going on.

14 So that's what I'm troubled by, Your Honor, and that's  
15 the record I think that needs to be made.

16 However, I am fine with saying we'll serve written  
17 discovery and I'll continue to work with Mr. Van Der Weele, but I  
18 see no way in the world that the issue will get resolved if  
19 Mr. Van Der Weele knows, "I don't have to answer any discovery  
20 requests until the issue's resolved," because then the resolution  
21 is 100 percent in his court and he has all the ability to thwart  
22 that, so he doesn't have to answer discovery. That's troubling  
23 to me, Your Honor.

24 THE COURT: Well, it was my understanding from your  
25 comment that there was at least one issue you believed would



1     require court intervention, and that was the basis of my decision  
2     to say let's get that sorted out before any additional discovery  
3     is made.

4             If it's conditional, it's not conditioned in such a way  
5     that you will never be able to conduct discovery. It was simply  
6     intended to ensure that we sort out any existing issues before we  
7     move forward with additional discovery that's going to create  
8     potentially new issues.

9             I'm going to say this. Miss Manolio, I understand  
10    what -- what I hear as frustration and perhaps being offended by  
11    Mr. Van Der Weele's various comments.

12            I will note that we've had, as you know, discovery  
13    disputes in this case and I generally have not liked the tone  
14    that has been used, and I hope to see that changed.

15            I take at your word that things have improved since you  
16    became more directly involved in the case, and that's a good  
17    sign.

18            I have been involved in cases over the years, not just  
19    as a lawyer, but as a judge in cases assigned to me where, for  
20    one reason or another, whether it's a patent case or a case like  
21    this when there are trade secrets involved, two companies are  
22    doing their best to litigate each other into the Stone Age and be  
23    as unpleasant about it as they possibly can be in the process.

24            I hope that is not what is happening, but if this  
25    continues and we get these kinds of calls, I will require senior

1 management representatives to be in my courtroom so that I can  
2 address them directly and tell them how things are going to  
3 happen.

4           This case was filed in April of last year right when  
5 the pandemic hit. It is, frankly, inconsistent with everything I  
6 have seen in the cases assigned to me, the effect of that  
7 pandemic, that one party in this case would be taking the  
8 position that no additional discovery is warranted no matter how  
9 much time has lapsed since last year. The pandemic has affected  
10 everybody's ability to do anything when it comes to litigation,  
11 and it is quite common and has been quite common for extensions  
12 to be permitted.

13           Speaking frankly, in my opinion, a somewhat hard line  
14 on that issue regardless of the reason is pushing the rock  
15 uphill, particularly when there doesn't seem to be any particular  
16 prejudice for a case that is not even 18 months old and we've had  
17 the kind of pandemic issues we've had and this is a complicated  
18 case.

19           I don't want to hear about that again. Either get it  
20 figured out, or I'm just going to take over discovery. And I've  
21 done that in cases before. And when I do that, nobody's happy  
22 except me, because I don't get these calls anymore.

23           I assume you'll be able to work these things out. If  
24 there are issues that can't be worked out on discovery, I want  
25 those motions filed as soon as possible, and I'm going to sort

1     them out.

2             Miss Manolio, you can serve your additional discovery,  
3     you can schedule additional depositions, but Mr. Van Der Weele, I  
4     want to see those motions as soon as possible, which means you  
5     have to confer as soon as possible so that we can get the motions  
6     T'd up and I can decide them. And I will decide them quickly.  
7     There's not going to be any delay. Even if they're written  
8     motions, I'll rule from the bench and you'll know what you have  
9     to do. Right now, my order stands.

10            MR. VAN DER WEELE: Your --

11            THE COURT: Hang on.

12            Miss Manolio, if the way I have decided to triage it  
13     presents problems for you in getting information in a timely  
14     fashion, I will extend the September deadline, but right now  
15     that's what we're going to do, and I want --

16            MS. MANOLIO: Understood.

17            THE COURT: Mr. Van Der Weele, when can you file those  
18     motions? And that means, how soon can you and Miss Manolio  
19     confer on everything that you think you need to confer about?

20            MR. VAN DER WEELE: So first of all, Your Honor, we --  
21     we did have a meet-and-confer, an extensive meet-and-confer on  
22     June 2. Prior to that, I had given Ms. Manolio a list of  
23     deficiencies of what we regarded as deficiencies in their  
24     supplemental production. Ms. Manolio made a number of  
25     commitments to provide additional information at that June 2

1 meet-and-confer, but she has not provided everything yet that  
2 even by her, you know, statements she's going to provide. She's  
3 working on it.

4           So I've been waiting, Your Honor, to see what we -- you  
5 know, the totality of what she is willing to provide before  
6 filing the motion.

7           So -- and I -- she provided some additional material, I  
8 think, just yesterday or the day before, but she acknowledges  
9 there's more to come. So I'm really waiting for more from her,  
10 Your Honor, because I don't want to make a motion and then while  
11 the motion's pending, you know, get some more stuff.

12           So that's a long way of saying that the timing really  
13 depends on when I hear -- when Ms. Manolio says, "Okay. This is  
14 all you're going to get." That's on the issue of further  
15 documents and responses to interrogatories, that sort of thing.

16           The other issue, the modification of the protective  
17 order that's required, I believe we can have that done within a  
18 couple weeks.

19           A complicating fact, Your Honor, is that my wife is  
20 having surgery in Seattle next week, so I'm going to be up there  
21 with her for that, but I think we can get it done by the end of  
22 July. That would be the motion to modify the protective order.  
23 And we have conferred on that as well, Your Honor, and -- and  
24 Ms. Manolio disagrees with -- I mean, she's not willing to allow  
25 the modification that I'm asking for, so --

1 THE COURT: All right.

2 MR. VAN DER WEELE: -- that issue is ripe for a motion.

3 THE COURT: All right. I would like to see those  
4 motions filed no later than August 2 so that we can get this  
5 sorted out. If that becomes a problem, confer with Miss Manolio  
6 and agree on a different date, but otherwise, let's get this T'd  
7 up quick and resolved so the parties know what they're going to  
8 get and not get and can move forward, including on the protective  
9 order.

10 I hope the surgery is nothing serious. Hopefully  
11 everything will go smoothly.

12 Mr. Van Der Weele, the other question you had in your  
13 e-mail was the impact, if any, of my upcoming retirement on the  
14 assignment of this case. My predecessor, whoever that will be,  
15 will inherit my civil caseload. So my predecessor will be taking  
16 over the case once I take senior status on -- after the close of  
17 business on March 5th. That is my retirement date.

18 I'll still be around for settlement conferences and  
19 criminal calendar duties, but I will not have any responsibility  
20 for civil caseloads except to the extent it might involve  
21 transition duties to get my successor up to speed.

22 So you'll have another magistrate judge, whoever takes  
23 my place, and Judge Immergut will remain your backup judge.

24 Any questions about that piece? Mr. Van Der Weele,  
25 first from you.

1 MR. VAN DER WEELE: Yes.

2 THE COURT: Go ahead.

3 MR. VAN DER WEELE: Yes, I do have a question about  
4 that, Your Honor. Thank you. This may seem like an odd  
5 question, but I haven't been able to -- the answer I've found,  
6 I'm not sure if it's right, but I was wondering if it is possible  
7 to consent to having you serve as the Article III judge for this  
8 case without automatically consenting to whoever your -- whoever  
9 inherits this case, assuming it's not complete by March 5 of next  
10 year.

11 The -- I ask that, because the Consent -- the standard  
12 Consent to Magistrate form is general, not specific. And from  
13 what I've been able to pick up anecdotally, once -- once you  
14 consent, you consent to not only the current magistrate, but any  
15 successor magistrate. And I just don't know if you have any  
16 insight on that or not.

17 THE COURT: I do, and it's secret and I'm not telling  
18 you. So there.

19 MR. VAN DER WEELE: Okay.

20 THE COURT: That's a joke, Phil. That's a joke.

21 MR. VAN DER WEELE: Oh. I thought you were serious.

22 THE COURT: No, I'm not -- oh, one thing I hate about  
23 phone, you -- well, never mind.

24 All right. Look, and this is consistent with what the  
25 Ninth Circuit has ruled when it comes to these consent issues, in

1    this district, here's how we do it:  if the case is assigned to a  
2    magistrate judge initially and the parties consent, there's full  
3    consent to that magistrate judge.  Then if a new magistrate judge  
4    takes over the case, the parties are given the opportunity to  
5    withdraw their consents or keep the consent in place for the new  
6    magistrate judge who's taking the case.  But if the case is  
7    assigned initially to an Article III judge and the parties fully  
8    consent to jurisdiction by magistrate judge, then that is taken  
9    as consent to any magistrate judge who might get the case from  
10   the Article III judge.

11               So in answer directly to your question, yes, that is  
12   possible if all parties consent.  I would be your judge for all  
13   purposes without need of an F&R or review by a district judge  
14   until the time that the case transfers to my successor, and at  
15   that time, the parties would, if they wish, be able to withdraw  
16   their consents or indicate their renewal and keep the case on  
17   full consent with my successor.

18               MR. VAN DER WEELE:  Thank you, Your Honor.  I  
19   appreciate that.

20               THE COURT:  You're welcome.  I'm sorry we don't do a  
21   better job on our website of explaining that, but your confusion  
22   is common among lawyers.

23               Miss Manolio, did you have any questions about that?

24               MS. MANOLIO:  I do not.

25               THE COURT:  Okay.  And I know, Miss Manolio, because

1     probably you handle cases in other federal districts outside of  
2     California and outside of Oregon, it depends on the district how  
3     magistrate judges are used and what the processes are.

4             MS. MANOLIO:   Right.

5             THE COURT:   So if you have any confusion about how  
6     things work and how we do things here, I encourage you to ask at  
7     any time.

8             MS. MANOLIO:   I appreciate that.

9             THE COURT:   All right.  We don't have a time for the  
10    status conference.  We'll make it on September 14.  My  
11    inclination is to make it for 10 o'clock unless that doesn't work  
12    for folks.  September 14 at 10 o'clock.  Veronica, does that work  
13    for you?

14            MS. MANOLIO:   I will make it work.  That happens to be  
15    my wedding anniversary, but I will make that work.

16            THE COURT:   We'll do it on a different day, then.  I'm  
17    not going to --

18            MS. MANOLIO:   It's totally fine, Your Honor.  It's  
19    telephonic, correct?

20            THE COURT:   Yes.

21            MS. MANOLIO:   Yep.  No problem.  I will make it work.  
22    You do not need to switch the date.

23            THE COURT:   All right.  And, Phil, what about you?

24            MR. VAN DER WEELE:  10 o'clock on Tuesday, September 14  
25    works for me, Your Honor.



1 THE COURT: Good. That's what we'll do.

2 All right. I think that covers everything, at least on  
3 the e-mail that Phil sent. Is there anything else we should take  
4 up, Miss Manolio?

5 MS. MANOLIO: I don't believe so, Your Honor.

6 THE COURT: Phil?

7 MR. VAN DER WEELE: No, Your Honor.

8 THE COURT: And just before we close, Veronica and  
9 Phil, I apologize for my edgy tone, but I'd like to see things go  
10 as smoothly as possible going forward. I think that was clear  
11 from my prior comments, and so let's hope that's what happens.

12 All right. Thank you, everyone. I appreciate it that  
13 you were available today and for the discussion, and we are  
14 adjourned. Have a good day.

15 MS. MANOLIO: Thank you.

16 MR. VAN DER WEELE: Thank you, Your Honor.

17 THE COURT: Bye-bye.

18 (Proceedings concluded at 10:38 a.m.)

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